

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 99-0561P
Tax Administration—Penalty
For the Years 1986-1996

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ISSUES

I. Tax Administration—Penalty

Authority: 45 IAC 15-11-2

Taxpayer protests the 10% negligence penalty.

STATEMENT OF FACTS

The penalty was proposed in the first instance because the auditor determined taxpayer had reported zero sales subject to Indiana's gross income tax for certain tax years and seriously underreported sales in other tax years. Taxpayer was aware of its duty to report such sales. Taxpayer argues that it had no intent deprive the Department of the revenue owed. Rather, taxpayer stated that the reason for the non-reporting and underreporting was due to accounting errors and misinterpretations of Indiana's corporate gross income tax statutes and regulations.

I. Tax Administration—Penalty

DISCUSSION

Penalty assessments depend on a number of factors outlined in the regulation cited *supra*, and can be waived based on a showing of sufficient cause:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as

negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer did not act with reasonable care. Taxpayer freely admits mistakes were made, but argues it did not act in a willfully negligent manner. Taxpayer outsourced its tax compliance and audit functions to a big name accounting firm. When a taxpayer relies on the expertise of an outside firm to secure the accuracy and completeness of its tax compliance and audit functions, taxpayer accepts the results, signs off on them, and presents them as true. If the accounting firm made mistakes and/or errors, taxpayer's recourse is against the accounting firm, not the State of Indiana. The Department denies taxpayer's request to abate the 10% penalty assessment.

FINDING

Taxpayer's request to abate the 10% negligence penalty is denied.